

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Shonna Counter,**

Plaintiff,

v.

**Siu Cheng Fu**, in individual and  
representative capacity as trustee of  
The 2015 Amendment and  
Restatement of The Siu Cheng Fu  
Revocable Trust;  
**Ash Hop II Inc.**, a California  
Corporation; and Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Shonna Counter complains of Siu Cheng Fu, in individual and representative capacity as trustee of The 2015 Amendment and Restatement of The Siu Cheng Fu Revocable Trust; Ash Hop II Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. She suffers

1 from Spinal Muscular Atrophy. Plaintiff drives a van that has a handicap  
2 placard issued by the state of California. She uses both a walker and wheelchair  
3 for mobility.

4 2. Defendant Siu Cheng Fu, in individual and representative capacity as  
5 trustee of The 2015 Amendment and Restatement of The Siu Cheng Fu  
6 Revocable Trust, owned the real property located at or about 2912 S.  
7 Sepulveda Blvd., Los Angeles, California, in August 2018.

8 3. Defendant Siu Cheng Fu, in individual and representative capacity as  
9 trustee of The 2015 Amendment and Restatement of The Siu Cheng Fu  
10 Revocable Trust, owned the real property located at or about 2912 S.  
11 Sepulveda Blvd., Los Angeles, California, in December 2018.

12 4. Defendant Siu Cheng Fu, in individual and representative capacity as  
13 trustee of The 2015 Amendment and Restatement of The Siu Cheng Fu  
14 Revocable Trust, owns the real property located at or about 2912 S. Sepulveda  
15 Blvd., Los Angeles, California, currently.

16 5. Defendant Ash Hop II Inc. owned IHOP located at or about 2912 S.  
17 Sepulveda Blvd., Los Angeles, California, in August 2018.

18 6. Defendant Ash Hop II Inc. owned IHOP located at or about 2912 S.  
19 Sepulveda Blvd., Los Angeles, California, in December 2018.

20 7. Defendant Ash Hop II Inc. owns IHOP ("Restaurant") located at or  
21 about 2912 S. Sepulveda Blvd., Los Angeles, California, currently.

22 8. Plaintiff does not know the true names of Defendants, their business  
23 capacities, their ownership connection to the property and business, or their  
24 relative responsibilities in causing the access violations herein complained of,  
25 and alleges a joint venture and common enterprise by all such Defendants.  
26 Plaintiff is informed and believes that each of the Defendants herein,  
27 including Does 1 through 10, inclusive, is responsible in some capacity for the  
28 events herein alleged, or is a necessary party for obtaining appropriate relief.

1 Plaintiff will seek leave to amend when the true names, capacities,  
2 connections, and responsibilities of the Defendants and Does 1 through 10,  
3 inclusive, are ascertained.

4  
5 **JURISDICTION & VENUE:**

6 9. The Court has subject matter jurisdiction over the action pursuant to 28  
7 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
8 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

9 10. Pursuant to supplemental jurisdiction, an attendant and related cause  
10 of action, arising from the same nucleus of operative facts and arising out of  
11 the same transactions, is also brought under California's Unruh Civil Rights  
12 Act, which act expressly incorporates the Americans with Disabilities Act.

13 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
14 founded on the fact that the real property which is the subject of this action is  
15 located in this district and that Plaintiff's cause of action arose in this district.

16  
17 **FACTUAL ALLEGATIONS:**

18 12. Plaintiff went to the Restaurant in August 2018 and December 2018 to  
19 eat. This Restaurant is conveniently located and is only four miles from  
20 plaintiff's residence.

21 13. The Restaurant is a facility open to the public, a place of public  
22 accommodation, and a business establishment.

23 14. Paths of travel are one of the facilities, privileges, and advantages  
24 offered by Defendants to patrons of the Restaurant.

25 15. Unfortunately, the paths of travel at the entrance of the Restaurant were  
26 inaccessible to plaintiff during her visit.

27 16. There was a front approach to the pull side of a swinging entrance door  
28 but there was not very much clearance to the strike side of the door when the

1 door gets opened because there was concrete support column near the door as  
2 it opens.

3 17. Because of the concrete column, a valet employee had to open and hold  
4 the entrance door open for plaintiff during her August 2018 visit.

5 18. Due to the configuration of the tables and chairs in the Restaurant, many  
6 of the paths of travel were less than 36 inches in width during plaintiff's visits.  
7 In fact, the paths of travel to the east dining room and toward the restroom of  
8 the Restaurant narrowed to as little as 24 inches in width due to customers  
9 dining chairs.

10 19. Because no customers were in the east dining area of the Restaurant  
11 during plaintiff's August 2018 visit, plaintiff was placed in the east dining area.  
12 The plaintiff was forced to sit in the aisle way during her meal because the  
13 tables were not accessible for plaintiff. Plaintiff, as a result of being placed in  
14 the aisle, became an obstruction as defined by the California Building Code  
15 and caused a "barrier" as that term is defined under the ADA by reducing the  
16 clear passage width. The plaintiff was embarrassed and frustrated to have to  
17 do something like that.

18 20. As a result of being placed in the empty east dining room, plaintiff felt  
19 isolated and alone. What is more, it was difficult for plaintiff to get timely help  
20 when she needed it during her meal.

21 21. Plaintiff could not navigate inside the Restaurant, either, without great  
22 difficulty. Indeed, when other patrons approached the transaction counter,  
23 plaintiff had to give way so that customers could get to the counter area from  
24 the entrance area. What is more, there is a small bench near the transaction  
25 area that blocked the entrance area of the Restaurant, causing issues for both  
26 the plaintiff and other customers.

27 22. Restrooms are another one of the facilities, privileges, and advantages  
28 offered by Defendants to patrons of the Restaurant.

1       23. The paper towel dispenser in the west restroom was mounted so that its  
2 highest operable part was greater than 48 inches above the finish floor and  
3 inaccessible to wheelchair users. In fact, the paper towel dispenser was about  
4 64 inches high.

5       24. The plumbing underneath the sink was not wrapped to protect against  
6 burning contact.

7       25. Additionally, the soap dispenser was mounted so that the sink  
8 obstructed the soap dispenser. As a result, the plaintiff could not reach the  
9 soap.

10       26. The restroom provides a toilet. Even though the toilet area had two grab  
11 bars on adjacent or parallel walls for use by persons with disabilities who need  
12 to transfer to the toilet, there was no room to grab one of the grab bars because  
13 of the location of a changing table that is in the restroom.

14       27. Currently, the paper towel dispenser is mounted so that its highest  
15 operable part is greater than 48 inches above the finish floor and inaccessible  
16 to wheelchair users.

17       28. Currently, the plumbing underneath the sink is not wrapped to protect  
18 against burning contact.

19       29. Currently, the grab bars are not accessible because of a changing table  
20 that is located in the restroom.

21       30. Transaction counters are also one of the facilities, privileges, and  
22 advantages offered by Defendants to patrons of the Restaurant.

23       31. Unfortunately, the transaction counter at the Restaurant was more than  
24 36 inches in height. In fact, the transaction counter was about 39 inches in  
25 height.

26       32. There was no lowered, 36 inch portion of the transaction counter at the  
27 Restaurant for use by persons in wheelchairs to conduct transactions.

28       33. Currently, the transaction counter at the Restaurant is more than 36

1 inches in height.

2 34. Currently, there is no lowered, 36 inch portion of the transaction  
3 counter at the Restaurant for use by persons in wheelchairs.

4 35. Defendants have failed to maintain in operable working condition those  
5 features of facilities and equipment that are required to be readily accessible to  
6 and usable by persons with disabilities at the Subject Property.

7 36. Plaintiff personally encountered these barriers.

8 37. This inaccessible facility denied the plaintiff full and equal access and  
9 caused her difficulty, discomfort, and embarrassment.

10 38. Plaintiff will return to the Restaurant to avail herself of its goods or  
11 services once the barriers are permanently removed. If the barriers are not  
12 removed, the plaintiff will face unlawful and discriminatory barriers again.

13 39. The defendants have failed to maintain in working and useable  
14 conditions those features required to provide ready access to persons with  
15 disabilities.

16 40. The restroom dispenser could be lowered to a compliant height for little  
17 to no cost.

18 41. Insulation can be installed under the sink at a cost of no more than \$25.

19 42. A common barrier removal project is modifying transaction counters to  
20 make a portion of the counter accessible. This is a simple construction task,  
21 well within the capabilities of any general contractor. The task can be  
22 completed easily and for a modest price.

23 43. Given the obvious and blatant nature of the barriers and violations  
24 alleged herein, the plaintiff alleges, on information and belief, that there are  
25 other violations and barriers on the site that relate to her disability. Plaintiff  
26 will amend the complaint, to provide proper notice regarding the scope of this  
27 lawsuit, once she conducts a site inspection. However, please be on notice that  
28 the plaintiff seeks to have all barriers related to her disability remedied. See

1 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 2 encounters one barrier at a site, she can sue to have all barriers that relate to  
 3 her disability removed regardless of whether she personally encountered  
 4 them).

5  
 6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 7 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 44. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 10 again herein, the allegations contained in all prior paragraphs of this  
 11 complaint.

12 45. Under the ADA, it is an act of discrimination to fail to ensure that the  
 13 privileges, advantages, accommodations, facilities, goods and services of any  
 14 place of public accommodation is offered on a full and equal basis by anyone  
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 16 § 12182(a). Discrimination is defined, inter alia, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,  
 18 or procedures, when such modifications are necessary to afford  
 19 goods, services, facilities, privileges, advantages, or  
 20 accommodations to individuals with disabilities, unless the  
 21 accommodation would work a fundamental alteration of those  
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is  
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 25 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
 26 Appendix “D.”
- 27 c. A failure to make alterations in such a manner that, to the  
 28 maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,  
2 including individuals who use wheelchairs or to ensure that, to the  
3 maximum extent feasible, the path of travel to the altered area and  
4 the bathrooms, telephones, and drinking fountains serving the  
5 altered area, are readily accessible to and usable by individuals  
6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 46. When an entrance or exit requires a front approach to the pull side of a  
8 swinging door, there must be a minimum of 18 inches clear floor space to the  
9 strike side of the doorway. Additionally, swinging doors shall have  
10 maneuvering clearances of 60 inches. 2010 Standards § 404.2.4.1.

11 47. Here, the failure to provide enough clearance is a violation.

12 48. The minimum clear width of an accessible route shall be 36 inches.  
13 2010 Standards § 403.5.1.

14 49. Here, the failure to provide an accessible path of travel inside the  
15 Restaurant is a violation of the ADA.

16 50. Under section 902 of the 2010 Standards, clear floor space complying  
17 with section 305 positioned for forward approach shall be provided. The clear  
18 floor or ground space, meanwhile, shall be 30 inches minimum by 48 inches  
19 minimum. 2010 Standards § 305.3. Finally, one full obstructed side of the  
20 clear floor or ground space shall adjoin an accessible route or adjoin another  
21 clear floor or ground space. 2010 Standards § 305.6.

22 51. Here, the space at the end of the tables does not meet the standards and  
23 is in violation of the law.

24 52. If controls, dispensers, receptacles or other equipment is provided in a  
25 restroom, they must be on an accessible route and be mounted so that their  
26 highest operable parts are no greater than 48 inches above the floor. 2010  
27 Standards § 308.3.

28 53. Here, the failure to ensure that the wall mounted accessories meet the



1 height requirement is a violation of the ADA.

2 54. Hot water and drain pipes under lavatories must be insulated or  
3 otherwise configured to protect against contact. 2010 Standards §606.5.

4 55. Here, the failure to wrap the plumbing underneath the sink is a violation  
5 of the ADA.

6 56. Side grab bars at the accessible toilet must be no less than 42 inches in  
7 length. 2010 Standards § 604.5.1. Additionally, the space between the grab  
8 bar and projecting objects above shall be 12 inches minimum. 2010 Standards  
9 § 609.3.

10 57. Here, because of the changing table, the amount of exposed and useable  
11 grab bar was well below 42 inches in length. Moreover, there was very little  
12 room whatsoever between the grab bar and the changing table.

13 58. Clear floor space that allows a forward or a parallel approach by a person  
14 using a wheelchair shall be provided at controls, dispensers, receptacles, and  
15 other operable equipment. 2010 Standards § 309.2.

16 59. Here, the failure to provide such floor space for the soap dispenser is a  
17 violation of the law.

18 60. Under the 2010 Standards, where the approach to the sales or service  
19 counter is a parallel approach, such as in this case, there must be a portion of  
20 the sales counter that is no higher than 36 inches above the floor and 36 inches  
21 in width and must extend the same depth as the rest of the sales or service  
22 counter top. 2010 Standards § 904.4 & 904.4.1.

23 61. Here, no such accessible counter has been provided in violation of the  
24 ADA.

25 62. The Safe Harbor provisions of the 2010 Standards are not applicable  
26 here because the conditions challenged in this lawsuit do not comply with the  
27 1991 Standards.

28 63. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily  
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 64. Here, the failure to ensure that the accessible facilities were available  
4 and ready to be used by the plaintiff is a violation of the law.

5  
6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)

9 65. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code §51(b).

16 66. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 67. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
20 rights to full and equal use of the accommodations, advantages, facilities,  
21 privileges, or services offered.

22 68. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
23 discomfort or embarrassment for the plaintiff, the defendants are also each  
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
25 (c).)

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act, which provides for actual  
9 damages and a statutory minimum of \$4,000 per occasion.

10          3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12  
13 Dated: February 9, 2019

CENTER FOR DISABILITY ACCESS

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16 By: \_\_\_\_\_

17 Chris Carson, Esq.  
18 Attorney for plaintiff  
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